

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ESMELING L. BAHENA,

Plaintiff,

v.

MENDOZA,

Defendant.

Case No. 1:22-cv-01585-BAM (PC)

ORDER GRANTING PLAINTIFF'S MOTION
TO WITHDRAW MOTION TO COMPEL
(ECF No. 78)

ORDER DIRECTING CLERK OF COURT TO
TERMINATE MOTION TO COMPEL
(ECF No. 70)

Plaintiff Esmeling L. Bahena ("Plaintiff") is a state prisoner proceeding through counsel and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's second amended complaint against Defendant Mendoza ("Defendant") for excessive force and deliberate indifference to medical care in violation of the Eighth Amendment. All parties have consented to Magistrate Judge jurisdiction. (ECF No. 40.)

On September 3, 2024, Plaintiff filed a motion to compel. (ECF No. 70.) The Court stayed briefing on the motion to compel and directed the parties to meet and confer and file a Joint Statement. (ECF No. 71.) Following an appearance by Plaintiff's counsel and an extension of time, the parties filed a joint statement on November 8, 2024. (ECF No. 75.) According to the joint statement, the parties determined the following: (1) Defendant will produce copies of Plaintiff's medical records; (2) Plaintiff will withdraw the pending motion to compel, (ECF No. 70); and (3) Plaintiff will be filing an opposed motion to conduct discovery now that his counsel

1 has entered an appearance. (*Id.*) On November 15, 2024, Plaintiff filed a motion to modify the
2 discovery and scheduling order. (ECF No. 76.)

3 On January 6, 2025, having received no further filings from the parties, the Court directed
4 Plaintiff to file a notice of withdrawal of the pending motion to compel within seven days and
5 directing Defendant to file an opposition or statement of non-opposition to Plaintiff's motion to
6 modify the discovery and scheduling order within fourteen days. (ECF No. 77.)

7 Currently before the Court is Plaintiff's motion to withdraw the motion to compel. (ECF
8 No. 78.) Although Defendant has not had an opportunity to respond to Plaintiff's motion, in light
9 of the joint statement of the parties the Court finds that no response is necessary and Defendant
10 will not be prejudiced by the withdrawal of Plaintiff's motion.

11 Accordingly, IT IS HEREBY ORDERED as follows:

- 12 1. Plaintiff's motion to withdraw the motion to compel, (ECF No. 78), is GRANTED;
- 13 2. Plaintiff's motion to compel, (ECF No. 70), is WITHDRAWN; and
- 14 3. The Clerk of the Court is directed to terminate the September 3, 2024 motion to compel,
15 (ECF No. 70).

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17 IT IS SO ORDERED.

18 Dated: January 13, 2025

/s/ Barbara A. McAuliffe
19 UNITED STATES MAGISTRATE JUDGE
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